

JOINT PROPOSED CASE MANAGEMENT PLAN

As directed in this Court's orders of January 28, 2019, and March 26, 2019, counsel for Plaintiffs Ksanka Kupaqa Xa'łéin, et al.; counsel for the Federal Defendants; and counsel for Defendant-Intervenor RC Resources, Inc. have conferred regarding the status of this case and to propose deadlines for the matters specified by the Court.

Counsel for the parties have discussed settlement and agree that settlement of this case is not possible at this time. However, the parties will keep an open mind and may continue to explore possibilities for settlement while this matter is pending.

Federal Defendants the United States Fish and Wildlife Service and the United States Forest Service have decided to review the Endangered Species Act (ESA) documents challenged in this litigation and, if warranted, intend to amend, supplement, or withdraw some or all of those documents within the next 90 days. Accordingly, Federal Defendants intend to move the Court for an order holding this case in abeyance for 90 days or until Federal Defendants provide notice that their review is complete if sooner than 90 days. Federal Defendants propose that the Court set a deadline for the parties to confer and submit a joint status report two weeks following the expiration of the stay to propose a schedule for the resolution of this case. This would permit the parties to agree to a schedule that will account for the results of the agencies' review, which may moot claims in this

case or lead to Plaintiffs amending or supplementing their complaint. Plaintiffs oppose the stay absent deadlines for Federal Defendants to (1) produce a draft administrative record for the agency decisions challenged in Plaintiffs' complaint within a reasonable time during the pendency of the stay; and (2) if appropriate in light of Federal Defendants' pending review of the challenged decisions, produce a final administrative record that includes materials considered by Federal Defendants in amending or supplementing the challenged decisions within a reasonable time after the stay concludes. Plaintiffs submit that such deadlines are necessary to mitigate the substantial delay in resolving Plaintiffs' claims that would result from Federal Defendants' requested stay and the associated risk that the parties and the Court will be burdened by emergency injunction proceedings in this matter. RC Resources does not oppose the Federal Defendants' forthcoming motion to stay the case.

As required by the Court's order, the parties have agreed on the following proposed deadlines if the Court declines to stay the litigation:

1. **Motions to Dismiss.** If the Court denies Federal Defendants' forthcoming motion to stay, Federal Defendants propose to file a motion for judgment on the pleadings regarding Plaintiffs' complaint no later than **June 24, 2019**. RC Resources will file a separate motion for judgment on the pleadings, if any, no later than **July 12, 2019**. Plaintiffs will file their response(s) to the

motion(s) no later than **August 2, 2019**. Plaintiffs may seek leave to file a consolidated response if appropriate in light of the arguments presented in the motions. Federal Defendants and RC Resources will file their replies no later than **August 16, 2019**.

2. **Certification of the Administrative Records.** On or before **September 6, 2019**, Federal Defendants will lodge the administrative records for the decisions challenged in Plaintiffs' complaint in electronic, indexed, and searchable format. Federal Defendants will simultaneously serve a copy of the administrative records on counsel for Plaintiffs and RC Resources and will also lodge with the Court a single hard copy of the relevant documents listed in paragraph 7 of this Court's January 28, 2019 order.

3. **Motions to Supplement the Administrative Records.** The parties will meet and confer no later than **October 4, 2019** to attempt to resolve any disputes concerning the contents of the administrative records lodged by Federal Defendants. If these efforts are unsuccessful, any motion objecting to the contents of the administrative records or seeking to complete, supplement, or augment the records with any documents, declarations, or other evidence will be filed no later than **October 18, 2019**. The parties agree that modification of the subsequent deadlines proposed below will be necessary in the event there is motions practice concerning the contents of the administrative records.

4. **Motions to Amend the Pleadings.** Absent motions practice concerning the content of the administrative records, any motion to amend the pleadings will be filed no later than **November 1, 2019**.

5. **Completion of Discovery.** Because this case is reviewed pursuant to the Administrative Procedure Act, the parties do not anticipate any discovery in this matter. Therefore, deadlines for completion of discovery are not necessary.

6. **Motions for Summary Judgment.** The parties propose that their respective motions for summary judgment be fully briefed no later than **March 16, 2020** (assuming no motions practice concerning the contents of the administrative records), pursuant to a staggered briefing schedule and word-count extensions as described below. Because this case will be resolved on the basis of the administrative records and there are no disputed issues of material fact, the parties request an exception from the requirement to file separate statements of undisputed facts under Local Civil Rule 56.1(a), which would promote efficiency and conserve the resources of the parties and the Court. The parties instead propose to include a recitation of the relevant facts as established in the administrative records within their respective summary judgment briefs.

<u>Filing</u>	<u>Deadline</u>	<u>Prop. Word Limit</u>
Plaintiffs' Motion for Summary Judgment	November 15, 2019	10,000 words
Defendants' Opposition and Cross-Motion for Summary Judgment	January 14, 2020	10,000 words
Defendant-Intervenor's Opposition and Cross-Motion for Summary Judgment	January 14, 2020	10,000 words
Plaintiffs' Opposition and Reply	February 13, 2020	7,500 words
Defendants' Reply	March 16, 2020	5,000 words
Defendant-Intervenor's Reply	March 16, 2020	5,000 words

7. **Additional Deadlines Agreed to by the Parties.** The parties do not propose any additional deadlines. The parties also have conferred and agree that a stipulation as to foundation and authenticity is not appropriate for this case because the scope of review is limited to the administrative records, as supplemented if necessary and appropriate.

Respectfully submitted this 20th day of May, 2019.

/s/Katherine K. O'Brien

Katherine K. O'Brien
Earthjustice
313 East Main Street
Bozeman, MT 59715
Phone: (406) 586-9699
Fax: (406) 586-9695
kobrien@earthjustice.org

Elizabeth Forsyth
Earthjustice
800 Wilshire Blvd., Suite 1000
Los Angeles, CA 90017
Phone: (415) 217-2000
Fax: (415) 217-2040
eforsyth@earthjustice.org

Counsel for Plaintiffs

JEAN E. WILLIAMS, Deputy Assistant Attorney General
SETH M. BARSKY, Section Chief
S. JAY GOVINDAN, Assistant Section Chief

/s/Devon Lea Flanagan

DEVON LEA FLANAGAN, Trial Attorney
(D.C. Bar No. 1022195)
U.S. Department of Justice
Environment & Natural Resources Division
Wildlife & Marine Resources Section
601 D St. NW
Washington, D.C. 20004
Tel: 202-305-0201/ Fax: 202-305-0275
Email: Devon.flanagan@usdoj.gov

MICHAEL R. EITEL, Senior Trial Attorney
U.S. Department of Justice
Environment & Natural Resources Division
Wildlife & Marine Resources Section
999 18th Street, South Terrace 370
Denver, Colorado 80202
Tel: 303-844-1479 / Fax: 303-844-1350
Email: Michael.eitel@usdoj.gov

Attorneys for Federal Defendants

/s/ Robert Tuchman
Robert Tuchman
Paul J. Lopach
BRYAN CAVE LEIGHTON PAISNER LLP
1700 Lincoln Street, Suite 4100
Denver, Colorado 80203-4541
Phone: (303) 861-7000
Facsimile: (303) 866-0200
Email: robert.tuchman@bclplaw.com

Counsel for Defendant-Intervenor RC Resources, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on May 20, 2019, I filed the foregoing with the Clerk of the Court using the CM/ECF system, which will cause a copy to be served on all counsel of record.

/s/Katherine K.O'Brien